

ARKANSAS SUPREME COURT

No. CACR 01-864

NOT DESIGNATED FOR PUBLICATION

Opinion Delivered October 5, 2006

WILLIE LEE MOORE

Petitioner

v.

STATE OF ARKANSAS

Respondent

PRO SE PETITION TO REINVEST
JURISDICTION IN TRIAL COURT TO
CONSIDER A PETITION FOR WRIT
OF ERROR *CORAM NOBIS* [CIRCUIT
COURT OF MISSISSIPPI COUNTY,
CHICKASAWBA DISTRICT, CR 2000-
248]

PETITION DENIED

PER CURIAM

Willie Lee Moore was found guilty by a jury of rape and residential burglary, and received an aggregate sentence of 240 months' imprisonment. The Arkansas Court of Appeals affirmed. *Moore v. State*, CACR 01-864 (Ark. App. January 30, 2002). Subsequently, petitioner timely filed in the trial court a *pro se* petition for relief pursuant to Ark. R. Crim. P. 37.1. The trial court denied the petition and we affirmed. *Moore v. State*, CR 02-983 (Ark. April 15, 2004) (*per curiam*).

Now before us is petitioner's *pro se* petition to reinvest jurisdiction in the trial court to consider a petition for writ of error *coram nobis*.¹ The petition for leave to proceed in the trial court with a petition for writ of error *coram nobis* is necessary because the circuit court can entertain a petition for writ of error *coram nobis* after a judgment has been affirmed on appeal only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (*per curiam*).

¹For clerical purposes, the instant pleading was assigned the same docket number as the direct appeal of the judgment.

A writ of error *coram nobis* is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). We have held that a writ of error *coram nobis* was available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (*per curiam*). For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). A writ of error *coram nobis* is appropriate only when an issue was not addressed or could not have been addressed at trial because it was somehow hidden or unknown and would have prevented the rendition of the judgment had it been known to the trial court. *Echols v. State*, 360 Ark. 332, ___ S.W.3d ___ (2005) (“*Echols Error Coram Nobis II*” or “*Echols ECN II*”); *Brown v. State*, 330 Ark. 627, 955 S.W.2d 901 (1997). *Coram nobis* proceedings are attended by a strong presumption that the judgment of conviction is valid. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984), citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975).

At trial, an employee of the Arkansas State Crime Lab testified on behalf of petitioner, explaining that petitioner’s DNA was not present in the victim’s vaginal swabs. When asked by the State if petitioner ejaculated, the victim responded, “No, I don’t know. Not that I know of. I do not know when I was having oral sex with him, but I don’t know[.]” The victim’s medical records from her emergency room examination the night of the crime, including the “History of Rape Incident” report, were introduced at trial as State’s Exhibit No. 2 and published to the jury. The report noted that the victim responded in the affirmative when asked whether petitioner ejaculated during the

crime. Several witnesses testified that the victim was hysterical the night of the rape, which may have accounted for the inconsistent statements.

Here, petitioner argues that the State persuaded the victim to change her story about the rape after receiving the rape kit DNA tests results, specifically, whether petitioner ejaculated. Petitioner further alleges that the State failed to inform petitioner and the court that the doctor was not going to be available as a witness at the trial, thus preventing petitioner from questioning the doctor about the victim's statements. Petitioner maintains that he became aware of the victim's initial responses for the first time while preparing his Rule 37.1 petition.

As proof of his claim, petitioner produced the History of Rape Incident form from the victim's medical records and what appears to be a part of the police report of the incident. The police report also noted that petitioner ejaculated during the rape. As explained above, the History of Rape Incident form was introduced at trial. As to the police report, petitioner's attorney filed a discovery motion prior to trial requesting all materials and information set forth in Ark. R. Crim. P. 17.1(a) – (d) and 17.2 – 17.5. There is no indication that petitioner's trial counsel did not receive the police report of the incident in the State's response to the discovery request.

Although petitioner now claims that the State withheld exculpatory information to bring this petition within the parameters of a petition for writ of error *coram nobis*, petitioner's allegations do not show that the prosecutor withheld any evidence. *Pitts, supra*. Documents that petitioner relies upon now were either introduced at trial or disclosed to trial counsel. Thus, the victim's initial report that petitioner did ejaculate during the rape was made part of, and was not extrinsic to, the record. *Larimore, supra*. The victim's initial statement to the examining doctor was addressed at trial, and was not hidden or unknown. *Echols, supra*. The trial court, in denying petitioner's Rule 37.1 claim

for postconviction relief, confirmed that the jury had to reach a decision in light of this conflicting evidence.

Petitioner has therefore failed to show grounds for reinvesting jurisdiction in the trial court to consider a petition for writ of error *coram nobis*. As no substantive basis exists for granting the petition, we need not reach the issue of whether petitioner exercised due diligence in filing this petition. We deny the petition to proceed with a petition for writ of error *coram nobis*.

Petition denied.